

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-786

November 16, 1998

CENTRAL MAINE POWER COMPANY,
Petition for Approval to
Furnish Gas Service in and to
Areas Not Currently Receiving
Natural Gas Service

EXAMINER'S REPORT

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may file responses or exceptions to this Report on or before November 19, 1998. It is expected that the Commission will consider this Report at its Deliberative Session on November 23, 1998.

I. SUMMARY OF ORDER

We approve CMP Natural Gas's proposed rate plan with certain modifications as described herein.

II. PROCEDURAL HISTORY

The Procedural History is contained in Appendix A to this Order.

III. DESCRIPTION OF SUPPLEMENTAL FILING

CMP Natural Gas's supplemental filing contained documentation of its potential supply resources (Appendix A), a revised construction schedule reflecting current plans (Appendix B), revised proposed terms and conditions of service (Appendices

C, D, and E), monthly minimum charge workpapers (Appendix F), and late collection fee workpapers (Appendix G).¹

In addition, the cover letter accompanying the supplemental filing outlined CMP Natural Gas's revisions made in response to the issues raised in the August 17th Order. Specifically, CMP Natural Gas submits the following:

- Corporate Organization:

CMP Natural Gas was organized as a Maine limited liability company on September 1, 1998.

- Financing Plan:

Members will make equity contributions as allowed pursuant to our order in Docket No. 98-077 and CMP Natural Gas will seek the necessary regulatory approvals (i.e. 35-A M.R.S.A. §902 et seq.) before obtaining debt financing.

- Shareholder Risk:

CMP Natural Gas proposes to freeze "base distribution rates during the 5-year period following the effective date of its schedules (proposed as December 1, 1998).

¹ The information in Appendices A, B, F and G are being accorded confidential treatment. CMP Natural Gas has released rate information (Appendices C and D) from confidential treatment.

Gas commodity rates will not be frozen; changes will be reflected in the Index Price Option and Fixed Price Option (IPO) (FPO) prices. Also, the company reserves the right to seek rate increases pursuant to 35-A M.R.S.A. §307 for upstream pipeline capacity costs if it deems necessary. See CMP Letter dated October 23, 1998 at 2.

Additionally, CMP Natural Gas seeks authority to negotiate individual special rate contracts that vary from the company's scheduled rates without Commission review. Finally, the company stated its expectation that, because the rate freeze places risk on shareholders, shareholders will be entitled to retain earnings "in the event costs are lower than expected or revenues are greater than expected." See CMP Cover letter at 3.

- Service Contract Provision:

CMP Natural Gas has eliminated the requirement that customers sign a contract for service to address concerns raised by the Maine Oil Dealers Association (MODA) previously in this proceeding.

- Monthly Minimum Charge and Late Collection Fee:

CMP Natural Gas proposes to revise its monthly minimum charge for residential customers to \$14.00 rather than \$15.00, and to revise its late collection fee to \$15.00 from \$98.00.

- Customer Notification of Pricing Terms:

CMP Natural Gas represents that it is developing marketing materials to clarify the pricing components and to make clear what portion of the customer's rate is subject to the rate freeze.²

IV. CONTENT OF THE RECORD

The record shall consist of all documents, transcripts, data responses, and other filings made in this proceeding.³

² The company also provided draft marketing brochures describing the IPO and FPO pricing options in oral data response #2.

³ Any objections to the record contents delineated here are due with exceptions on November 19, 1998.

V. ISSUES**A. Rate Freeze Proposal**

In our August 17th order we stated the following:

CMP [Natural Gas] should revise its rate plan to assure us . . . that the rates will remain stable over time and that the risk of errors in cost or estimates will not be borne by ratepayers. Shareholders must bear the risk of uneconomic development. We emphasize that we do not require any particular relationship between "costs" (however estimated) and prices . . . our primary examination of CMP NG's proposal, then, will be whether risks have been allocated appropriately.

August 17th Order at 39-40.

In our Order of October 5, 1998 (October 5th Order), we clarified that we would not require gas costs to be subject to a price cap as those costs are largely competitively determined.

CMP Natural Gas now proposes to freeze its base distribution rates for five years beginning on December 1, 1998. CMP Natural Gas proposes to collect gas commodity costs through its IPO and FPO pricing mechanisms as described in its original filing. However, CMP Natural Gas further indicates that, according to its proposal, upstream capacity costs also will not be subject to the rate freeze.

CMP Natural Gas requests that the Commission confirm this and that the company may seek a rate change pursuant to 35-A M.R.S.A. § 307 "if, in the company's view, the post-construction rates of the PNGTS or M&NE pipelines are materially different

from the rates in the pipelines' pro forma tariffs." See CMP Letter dated October 23, 1998 at 2.

1. Sufficiency

We must consider whether CMP Natural Gas's rate freeze proposal satisfies the criteria we established in our August 17th Order, i.e. that investors, not ratepayers are at risk for the investment decisions of CMP Natural Gas. We will address this in the context of the issues that have been raised by the parties to this proceeding.

a. Treatment of Rate Components

CMP Natural Gas proposes to freeze distribution system rates only -- the rate that is designed to recover the costs of constructing the distribution system and providing customer service -- not gas and upstream pipeline capacity.

As long as this portion of the rate remains frozen, shareholders would be limited to actual earnings above distribution costs, whether positive or negative. This serves the objective of insulating ratepayers from the distribution system investment decisions that the company makes, at least for the term of the freeze.

CMP Natural Gas proposes to freeze base distribution rates for five years beginning December 1, 1998. Because of the length of time projected to build the distribution system out to a level where it can sustain itself, we consider

five years the minimum term for this start-up entity. The shortness of the term may result in difficult questions regarding the allocation of risk to investors versus ratepayers if the Company seeks a base distribution rate increase for the sixth year. Nevertheless, the proposal does ensure a period of partial rate stability and appropriately places the early start-up investment burden on shareholders. While we might prefer a longer, more comprehensive rate stability mechanism, this proposal offers something of value. Thus, we accept the 5-year base distribution rate freeze term.

The components of rates that CMP Natural Gas does not propose to freeze (gas commodity and upstream pipeline capacity) would be subject to change in different ways.

Gas commodity price projections are factored into the IPO and FPO mechanisms. We have already approved these pricing mechanisms stating:

Competition, coupled with the placing of project risk squarely on shareholders, substantially reduces our concern over how rates are developed.

August 17th Order at 25. Our comfort with these pricing mechanisms rests on the premise that shareholders, not ratepayers, bear the risk that these pricing mechanisms will not fully recover CMP Natural Gas's gas costs over time. There is no reconciliation of gas commodity costs in the IPO/FPO mechanism. In contrast, both Northern and Bangor Gas will recover gas costs under reconcilable cost of gas adjustment (CGA) rate mechanisms.

Thus, the IPO/FPO pricing mechanism constitutes an additional element of shareholder risk undertaken by CMP Natural Gas.

Similarly, CMP Natural Gas does not propose to recover upstream capacity costs through a reconcilable cost of gas adjustment as do the Northern and Bangor Gas rate structures. However, rather than freezing these costs, CMP Natural Gas proposes to seek a rate increase pursuant to 35-A M.R.S.A. § 307 if it believes it is necessary. CMP Natural Gas notes that finally authorized interstate pipeline transportation rates charged by PNGTS and MNE could be significantly different from those originally proposed at FERC. As this is a matter outside the LDCs control, the company wishes to reserve this component from the rate freeze.

We find CMP Natural Gas's proposal reasonable with respect to its treatment of various rate components. We see no reason to require CMP Natural Gas to absorb upstream pipeline capacity rate changes at this juncture. The other currently approved LDCs are not required to do so; these costs are typically collected as gas costs through the CGA mechanism. CMP Natural Gas's proposal places more risk on shareholders than does either Northern or Bangor Gas's CGA treatment of these costs, due to regulatory delay and the fact that these costs may not be reconciled under section 307.

Northern argued that CMP Natural Gas's proposed treatment could disadvantage ratepayers because

reductions in upstream capacity costs would not automatically flow back to ratepayers as they do under the traditional CGA mechanism. Northern's Brief at 12. We do not view this as a significant offsetting factor since the full panoply of statutory remedies -- including initiating rate investigations on ratepayer complaint and making rate changes through commission order and initiative -- is available should FERC-approved reductions in upstream capacity costs occur.

Accordingly, we find CMP Natural Gas's proposed rate treatment of base distribution, gas commodity, and upstream pipeline capacity costs generally reasonable.

b. Effective Date

CMP Natural Gas proposes that its 5-year base distribution rate freeze begin on December 1, 1998. Because of uncertainties surrounding the in-service date of PNGTS and actual distribution system construction completion, there is uncertainty as to when CMP Natural Gas will actually begin providing service. Bangor Gas and Northern argue in briefs that the term of CMP Natural Gas's rate freeze will not be meaningful unless it goes into effect beginning on the date CMP Natural Gas actually begins to provide service or to provide substantial service. Thus, they request that we establish the starting date of the rate freeze term at a later date than December 1, 1998.

In reply, CMP Natural Gas argues that the potential delay of its in-service date is a matter of a few months at most and therefore insignificant. CMP Natural Gas hopes to begin service in Windham on December 1, 1998 if PNGTS is also in-service at that time. It is unclear when PNGTS will actually be in service, however, delays are expected. If significant delays in the completion of PNGTS's construction occur, CMP Natural Gas may not be able to provide service until the spring of 1999 or possibly later.

Because we wish to see ratepayers benefit to the maximum extent possible from CMP Natural Gas's commitment and because it appears unlikely that there will be a gas supply for the LDC available by December 1, 1998, we will require the term of CMP Natural Gas's base distribution rate freeze to begin on a somewhat later date. Setting a specific date will allow CMP Natural Gas to inform potential customers of the expiration date of the base distribution rate freeze in its marketing materials.

Given current construction status and winter delays that may be anticipated, we select April 1, 1999 as the mid-range of the likely construction completion window for both the PNGTS pipeline and CMP Natural Gas's first project area. We set this date with the expectation that the actual date on which CMP Natural Gas will begin providing service to its tariffed customers will vary from the designated start-date by only a few months at most.

Accordingly, CMP Natural Gas's 5-year rate plan will begin April 1, 1999 and will expire March 31, 2004.

c. Customer Understanding

The intervenors raise concerns about whether potential customers will be fully informed about the workings of CMP Natural Gas's proposed pricing mechanisms and rate freeze. Specifically, they are concerned that customers may be misled by the statement that CMP Natural Gas is subject to a 5-year rate freeze because only a portion of the customer's bill would be frozen. Pricing transparency is also complicated by the fact that CMP Natural Gas's IPO/FPO rate structure contains a "base gas cost" of \$3.00 comprised of a component for estimated upstream capacity costs and a component for estimated gas costs. The IPO and FPO adjustments, reflecting gas and oil commodity NYMEX futures, are made to the "base gas cost" amount. Thus, 1) the customer's bill will not reflect a pure unit cost of gas amount, 2) monthly IPO or fixed term FPO adjustments will relate to only a portion of the base gas cost (i.e. the commodity portion), and 3) the Company may seek an increase in the component for upstream capacity costs at any time it deems necessary. The customer will be able to calculate a bundled average price per therm using total annual bills and usage but calculating the pure unit cost of gas for comparison to other fuels or natural gas offers is very complicated. Finally, only one part of a customer's bill -- base distribution rates -- are

frozen for a term. And, of course, billed distribution service amounts will vary with usage. The complexity of all of these pricing factors could lead to significant customer confusion.

These concerns implicate both competitive and consumer protection issues. Competitors wish to ensure full disclosure in the market place, so that customers are not misled into taking service with the other entity. Consumer advocates wish to ensure that customers fully understand the complexities of the rates and prices that are offered to them to enable them to make wise and efficient choices.

Customer confusion probably cannot entirely be avoided but it is likely that it could be mitigated with carefully designed marketing materials. In an effort to avoid disputes on the matter of how CMP Natural Gas is promoting its rates and services, we will address several aspects of CMP Natural Gas's pricing and rate freeze proposal now. Our goal is to enable customers to better understand and evaluate the company's offering.

Accordingly, the Company should explicitly state that only one component of its bill, the base distribution rates, will be frozen. The Company should provide a representative example or sample bill that displays the various components and a relative impact of each on the total bill. Moreover, the marketing material must clearly indicate the end date of the rate freeze term. This should reduce or eliminate

confusion that may occur over the duration and magnitude of the rate freeze.

The OPA recommends that we order CMP Natural Gas to provide a graph that illustrates the relative impact of each of the rate components on the customer's total bill. We think this is a constructive suggestion and it would enable customers to better understand the pricing package that they will obtain when they take service with CMP Natural Gas. We suggest that the graph appearing at the bottom of ODR-04 at page 2 (attached as Appendix B hereto) may be satisfactory.⁴

We require CMP Natural Gas to provide copies of its proposed marketing materials for review in the compliance phase of this proceeding

d. Shareholder Earnings

CMP Natural Gas indicated in its October 1st letter that it proposes a base distribution rate freeze with the "understanding that because a rate freeze places the risk of increased costs on shareholders, that shareholders are entitled to the corresponding reward in the event that costs are lower than expected, or revenues are greater than expected," citing our August 17th Order.⁵

⁴ The graph in Appendix B is not clear enough to be truly informative. We request that CMP Natural Gas provide the graph in color or in a form that clearly delineates the four rate components.

⁵ The Order at 40 states:

It would be poor regulation, however, to

As we indicated in our October 5th Order addressing Northern's request for clarification of our policy for rate of return regulation for expansion areas, we will consider the question of an appropriate earnings level on a case by case basis. As we also stated therein:

We are, however, open to the possibility that an LDC may be allowed to earn high returns, without regulatory intervention, for expansion areas that are appropriate to the allocation of risk for that undertaking.

October 5th Order at 5. It is unnecessary to comment further at this time except to make clear that we are not now approving unlimited earnings for CMP Natural Gas. We will consider the question if it becomes an issue in a future proceeding.

B. Promotional Allowances

In its Brief, Northern argues that CMP Natural Gas is proposing to collect 100% of its promotional allowances from customers and has stated that it would re-evaluate its proposed project if it is not allowed to do so. See Northern's Brief at 8. Northern notes that the Commission has not allowed Northern to include promotional allowance expense in rates. Northern argues that the Commission should not hold each LDC to different ratemaking standards. Moreover, Northern notes that the Commission recently approved modifications to Northern's promotional allowance program subject to treatment in accordance

place ratepayers at risk even of reconversion costs where, as we find here, shareholders should bear the risk (and, not coincidentally, enjoy the benefits) of their investment choices.

with newly-enacted Chapter 820 which requires that all non-core and *de minimis* activities be treated as below the line for ratemaking purposes. See Northern Utilities, Inc., Docket No. 98-654, Order (Sept. 11, 1998). Northern argues that CMP Natural Gas will have a distinct advantage over other LDCs if they are allowed to shift costs and associated risks to ratepayers. Consequently, Northern argues that regulatory policies should place all LDCs on a level playing field. See Northern Brief at 9.

We agree that regulatory policy is stronger when it all similarly situated entities are treated equally. In this increasingly competitive environment it will be as important, if not more so, for the Commission to hold LDCs to the same regulatory standards as much as possible.

Therefore, we wish to make clear that in approving CMP Natural Gas's rate plan -- as with Bangor Gas's rate plan⁶ -- we are not approving specific costs, such as promotional allowances, into rates.

⁶ CMP Natural Gas argues that Bangor Gas was allowed to include promotional allowance in its rates. This is incorrect. As here, because Bangor Gas is operating under an approved rate cap plan, specific costs have not been approved for inclusion in rates; shareholders are effectively at risk for recovery of all investment and expenses for the duration of the plan. See Bangor Gas Company LLC, Petition for Approval to Provide Gas Service in the Greater Bangor Area, Docket No. 97-795, Order Approving Rate Plan (June 26, 1998).

Nor are we modifying the policy established in our rule and precedent on the appropriate treatment of promotional allowances. Chapter 830(5)(C) of the Commission's Rules states:

It is the policy of the Commission and it adopts the standard that no electric or gas utility shall recover from any person other than its shareholders or other owners for any expenditures, contributions, expenses, or cost of such utility incurred with respect to institutional advertising, promotional advertising, or **promotional allowances...** Each electric or gas utility which files with the Commission for a change in rates shall account separately for all expenditures, contributions, expenses, and costs associated with institutional advertising, promotional advertising, and **promotional allowances...**

Chapter 830(5)(C) (emphasis added).

We are simply allowing the Company to go forward with its proposal to construct, price, and operate a natural gas distribution utility within Maine as it sees fit, having determined that the proposal will result in "safe and adequate service at just and reasonable rates."⁷ See Mid Maine Gas Utilities, Inc. Request for Approval to Furnish Gas Service, Docket No. 96-465, Order (March 7, 1997) at 8-9 (*Mid-Maine*).

We have explicitly stated in this proceeding, as in *Mid Maine*, that we will allow LDCs to price their services and develop their systems competitively so long as shareholders bear

⁷ In so doing, we are also permitting CMP Natural Gas to provide promotional allowances as required by Chapter 830(4). The Company should comply with reporting requirements of the Rule and file a rate schedule describing the promotional allowances that will be offered.

the risk of entrepreneurial investment decisions. We review the costs and projected revenues submitted in support of the proposed project to support a determination that the project is likely to result in just and reasonable rates, but we do not substitute our judgment for that of the project developers.

We need not decide the question whether promotional allowances should be recovered in distribution gas utility's rates as long as they are operating under the condition of a rate freeze or rate cap plan because shareholders bear the risk that revenues will not exceed cost for the duration of such a plan. The issue only arises when and if we are requested to establish changes in rates for a utility. This is also consistent with our rule:

Any request for allowance of such expenditures, contributions, expenses, or costs as an operating expense for ratemaking purposes shall be made in the form of an adjustment to the test period operating expenses, which adjustment must be supported by adequate evidence and documentation. The Commission may allow or disallow the adjustment, or any part thereof, on the basis of the policy expressed in this rule and the justness and reasonableness of the expenditure, contribution, expense, or cost in the particular case.

Chapter 830 (5)(C). Thus, depending on the extent to which we apply traditional ratemaking principles,⁸ we need address this issue only if CMP Natural Gas seeks a rate increase in some

⁸ It is possible that if a gas distribution utility seeks to operate under a non-traditional rate structure, we again may not need to reach the question of what specific costs may be included in rates.

future year of its operation (after the rate freeze expires) if it is proposing to include promotional allowance expenses in its rates.⁹

C. Special Contracts

1. Need for Commission Approval

CMP Natural Gas has requested authority to enter special contracts without Commission review and approval.

Northern argues that CMP Natural Gas should not be afforded such regulatory flexibility. Northern points out that there is little information in the record as to the fundamental terms of such contracts (such as that they would be subject to a marginal cost based floor price). Furthermore, Northern is not allowed to do so. Northern again seeks regulatory parity with other LDCs with which it must compete.

Northern and CMP Natural Gas's situations are distinguishable and warrant different regulatory treatment. CMP Natural Gas is proposing that shareholders bear the start-up risk of its project implemented through a 5-year base distribution rate freeze. We have made clear that under circumstances where shareholders bear project risk, we will allow the utility to engage in flexible pricing and other entrepreneurial decision making.

Northern currently operates under a traditional regulatory structure; it has no alternative regulatory structure

⁹The issue could also be brought by Northern or Bangor Gas in a similar manner.

(i.e. performance-based rate plan or rate cap plan) in place which would allocate risks and profit in a manner that would place the risks of price discounts more directly on shareholders. Thus, consistent with traditional rate of return regulation, we must review all special contracts proposed by Northern to ensure that other ratepayers will not be disadvantaged.

One further point bears explicit mention. We will allow CMP Natural Gas to enter special rate contracts without prior Commission review and approval, but we do not guarantee recovery of foregone revenues from other ratepayers. This is consistent with our policy of placing start-up business risk on shareholders and with CMP Natural Gas's expectation. See Tr. K-66-67. If and when CMP Natural Gas seeks rate changes upon the expiration of its rate plan, we can address the question whether tariffed rate customers should be required to contribute more to make up for discounted prices to special contract customers.

In the meantime, we will require CMP Natural Gas to file in this docket for informational purposes any special contracts it enters into with customers, and to demonstrate the basis for its expectation that projected contract revenues will be in excess of costs.¹⁰ We will not review and approve each contract, but reserve the question of specific ratemaking treatment for a rate case.

D. FPO Obligation

¹⁰ CMP Natural Gas may request confidential treatment if appropriate; we will not make that finding at this time.

CMP Natural Gas's proposed tariffs state that a customer may not change service arrangements until they complete the FPO term.¹¹ See CMP Natural Gas, Terms & Conditions, Page 20.1. Bangor Gas argues that this provision "raises questions about the impact of the provision in a competitive market for gas." See Bangor Gas Brief at 5.

Inasmuch as customers may elect to take service under either the IPO or FPO and under the FPO option they are free to select a variety of terms, we do not view this provision as inhibiting the competitive market but rather offering customers service choices. Because the FPO terms will expire, customers may periodically reevaluate their service and suppliers. We prefer to allow consumers to make their own choices from a broad array of options rather than limiting those options by regulatory mandate.

Accordingly, we approve this provision.

E. Capacity Assignment

1. Legal Framework

At the October 21st technical conference, the Hearing Examiner requested that the parties brief the threshold question whether mandatory capacity allocation is allowed under Maine law, specifically 35-A M.R.S.A. § 4707.¹² This section states:

¹¹However, a customer is not required to compensate the Company for an unexpired FPO term if they choose to terminate service entirely. See CMP Natural Gas Terms & Conditions, Page 10.2.

¹²At the technical conference, CMP Natural Gas confirmed that it seeks a Commission ruling on its mandatory capacity assignment

Notwithstanding any other provision of this Title, costs arising from obligations incurred by a gas utility after March 1, 1998, other than costs or obligations that are beyond the control of the gas utility, determined by the Commission in an adjudicatory proceeding to be unrecoverable as a result of competition or deregulation are incurred at the risk of the shareholders of the gas utility and may not be borne by ratepayers of the gas utility. This section may not be interpreted as requiring that costs incurred prior to March 1, 1998 be recovered from ratepayers.

Public Laws 1997, ch. 707, enacted 34-A M.R.S.A. §4707.

The parties provided conflicting opinions as to the legal effect of this new statutory provision. OPA concluded that mandatory capacity assignment is not allowable under the law because it would require customers to cover obligations incurred by the utility that become unrecoverable as a result of competition or deregulation. OPA argued that the statute would be rendered meaningless if the countervailing argument that the utility is obligated to purchase resource supplies in order to provide bundled services were adopted.

Bangor Gas and Northern argued that the statute may allow mandatory capacity allocation but both argued strenuously that the commission should not make a policy determination in this proceeding without allowing broader, more thoughtful consideration of the complexities that are involved. They noted that a variety of allocation methodologies and policies are being explored in numerous jurisdictions and urge proposal at this time.

the Commission to take advantage of the knowledge and experience that is being gained elsewhere before ruling on this matter.

Finally, Bangor Gas and Northern argued that it is neither necessary nor equitable to decide the matter in this case. CMP Natural Gas has not provided a sufficient record with which the Commission could determine that the tariff provision is just and reasonable. See Bangor Gas Brief at 9 and Northern Brief at 5-6.

2. Policy Questions

We agree with Bangor Gas and Northern that this proceeding is not the appropriate vehicle to determine whether to allow CMP Natural Gas to require mandatory capacity assignment. The issue requires careful consideration and any policy on this subject should consider the importance of statewide application.

There are already two authorized natural gas utilities in Maine, neither of which has been afforded the luxury of knowing how such costs will be recovered upon the loss of customer load. We have taken the unprecedented step of allowing competition to determine actual LDC service areas. As a result, we must take care to assure that competition among LDCs is fair. Providing one competitor an assurance of cost recovery, while not extending the same assurance to other LDCs could result in unwarranted competitive advantages and disadvantages.

Moreover, the assignment of upstream pipeline capacity can have implication for the prices paid by all of

Maine's gas customers, not just those of CMP Natural Gas. A voluntary assignment program would allow marketers to choose resources that optimize their portfolios and results in lower total costs to customers. Mandatory assignment could have the opposite effect, driving up total costs to customers, and even chilling the development of a competitive market in the State.

We agree with Northern that "capacity assignment is one of the most complex and significant issues related to unbundling and must be addressed with regard to regional consistency." See Northern Reply Brief at 1. We also recognize that there may be many entities that have an interest in our determination of policy on this issue who have had no notice that this issue might be adjudicated in this case.

It is wiser to address this matter in a proceeding designed to receive comments from a broad array of interested parties enabling us to establish policy in a deliberate and comprehensive manner. CMP Natural Gas or any other utility is free to petition the Commission to initiate an investigation into the appropriate regulatory treatment of upstream capacity costs, but we are not prepared to make such a determination on this record.

3. Necessity of Interim Treatment for CMP Natural Gas

We are satisfied that deferring a decision on the treatment of upstream capacity costs will not pose an undue hardship on CMP Natural Gas. Unlike Northern, CMP Natural Gas

has made no contractual commitments for upstream pipeline supply. Therefore it currently has no financial exposure. CMP Natural Gas can move ahead with future supply and customer arrangements with this risk in mind.

Moreover, the Company's current proposal does not appear to expose it to much risk. For example, the Company proposes to offer transportation service initially only to customers with the capability to engage in "Daily Balancing." See Page 21 of the Company's proposed Term & Conditions. These tend to be large customers who will likely take transportation service from the start and thereby will not rely on CMP Natural Gas for supply services.

In technical conference, CMP Natural Gas witness Kelly agreed that it has little financial risk related to stranded upstream capacity from these customers. See Tr. at K-57. In addition, the Company could negotiate specific supply arrangements with special contract customers. Tr. at K-69.

Witness Kelley indicated that the Company is primarily concerned about the loss of large groups of small customers that could occur through a small customer aggregation program. Id. at K-57. Consequently, the Company intends to propose retail unbundling for small customer only after the utility becomes operational. It will be sufficient to deal with this issue when that time arrives if it has not been resolved earlier.

As our final consideration on this point, we note that CMP Natural Gas has not clarified precisely how it would make capacity assignments (i.e. as a proportionate slice of the full system resources or by some other allocation methodology). We find the record insufficient without further detail.

F. Monthly Minimum Charge

In our August 17th Order, we delegated approval of the monthly minimum charge to the Director of Technical Analysis. We understand that a separate order approving this rate will be forthcoming.

G. Late Collection Fee

In our August 17th Order, we delegated approval of the monthly minimum charge to the Director of Technical Analysis. We understand that a separate order approving this rate will be forthcoming.

H. Resource Plan

In our previous order, we stated:

With the condition of investor risk on CMP NG's proposal as a whole, however, we need only review CMP NG's proposed resource plan to determine that it is realistic and that it will have adequate gas supplies to provide the services that it proposes.

October 5th Order at 3.

CMP Natural Gas provided five additional letters from potential suppliers in its supplemental filing. These letters do not indicate supply commitments as yet, only potential. However, as in our review of Bangor Gas's resource plan, we are reasonably

satisfied that CMP Natural Gas will have gas supply resources available to it. Moreover, as we determined in our review of Bangor Gas's application, given the remaining uncertainties with regard to the interstate pipelines and their proposed rates it is premature to expect CMP Natural Gas show firm commitments for a complete resource portfolio.

Finally, because the price of these supplies is a matter to be determined by the FERC and the market and gas cost pricing mechanisms will be largely at shareholders risk, and because customers are free to decide not to take service from CMP Natural Gas at the prices it is able to offer, we need not obtain further detail as to the cost of these supplies.

I. Other Issues

We require one wording change in the Company's revised terms and conditions of service. On Page 12.1 of its General Terms and Conditions, Subsection 12 (G) (5) should be revised to provide the reader with an explanation of this bill component. We suggest adding the phrase "as corporate return" after the term "9.75%."

The remaining issues raised in our August 17th Order or in the course of supplemental review, including corporate organization, financing plan, construction plan, and tariff language appear to be sufficiently resolved.

VI. CONCLUSION

We approve CMP Natural Gas's rate plan with certain modifications as noted herein.

Respectfully Submitted,

Carol A. MacLennan
Hearing Examiner

and

Denis Bergeron
Senior Utility Analyst

Appendix A: Procedural History

On August 17, 1998, we issued an Order (August 17th Order) granting CMP authority to provide service to certain areas of the state subject to our approval of a further filing as outlined therein.¹³

On September 8, 1998, we issued an order clarifying that we would not require a price cap for CMP Natural Gas, L.L.C.'s gas costs and correcting wording in our August 17, 1998 Order.

On October 1, 1998, CMP Natural Gas submitted a supplemental filing in response to the Commission's August 17th Order, containing revisions to its original proposal. The filing contained revised or updated information regarding CMP Natural Gas's resource portfolio, construction schedule, revised tariffs, and monthly minimum charge and late fee workpapers.

Advisory Staff initiated discovery on October 6, 1998. Bangor Gas filed a letter requesting that the Commission establish a schedule for review of the supplemental filing so that parties could participate.

The Hearing Examiner held a conference of counsel on October 13, 1998 following which the parties filed a proposed schedule for review of the supplemental filing. CMP Natural Gas provided data responses on October 13th and 14th.

A technical conference was held on October 21, 1998, attended by Bangor Gas, Northern Utilities, the OPA, and Advisory

¹³See August 17th Order, Appendix A, for prior case history.

Staff. The technical conference was recorded; no party objected to entering the transcript of the technical conference into the record of this proceeding. No party requested an additional formal hearing on the supplemental filing.

CMP Natural Gas provided further written responses to oral data requests on October 22nd. CMP Natural Gas filed revised tariff sheets on October 23, 1998 and its further request that the Commission confirm that CMP Natural Gas may seek a rate change pursuant to 35-A M.R.S.A. §307 for changes in upstream capacity costs.

CMP Natural Gas, Northern, OPA, and Bangor Gas filed briefs on November 4, 1998. OPA, Northern, and CMP Natural Gas filed reply briefs on November 9, 1998.

The Examiner's Report issued November 16, 1998. Exceptions were filed by _____. Deliberations were held on November 23, 1998.